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JUN 22 2009

OFFICE OF PETITIONS

In re Application :
Larsen, et al. :
Application No. 09/935,144 : PATENT TERM ADJUSTMENT
Filed: August 21, 2001 :
Dkt. No.: GFM-5213CP6CN :

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT-PRE-GRANT," filed May 20, 2008. This matter is being properly treated as a timely filed application for patent term adjustment pursuant to 37 CFR 1.705(b).

The application for patent term adjustment (PTA) under 37 CFR 1.705(b) is **HELD IN ABEYANCE IN PART AND DIMISSED IN PART.**

The Determination of Patent Term Adjustment under 35 USC 154(b), mailed March 5, 2008, indicated a patent term adjustment (PTA) to date of 292 days. The instant application for PTA was timely filed May 20, 2008, prior to issue fee payment. Applicants argue that the adjustment of 292 days should be increased to 680 days.

The instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within three years of the filing date of the application. A decision is being **held in abeyance** until after the actual patent date. Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term for Office failure to issue the patent within three years. See, 37 CFR 1.703(b).

Applicants are given **TWO (2) MONTHS** from the issue date of the patent to file a written request for reconsideration of the patent term adjustment for Office failure to issue the patent within three years. A copy of this decision should accompany the request. Applicants may seek such consideration without payment of an additional fee. However, as to all other bases for seeking reconsideration of the patent term adjustment indicated in the patent, all requirements of 37 CFR 1.705(d) must be met. Requests for reconsideration on other bases must be timely filed and must include payment of the required fee.

Applicants are reminded that if an application is entitled to an adjustment under 35 USC 154(b)(1)(B), the entire period during which the application was pending (except for periods excluded under 35 USC 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 USC 154(b)(1)(B) in determining whether periods of delay overlap under 35 USC 154(b)(2)(A).

Thus, any days of delay for Office issuance of the patent more than three years after the filing date of the application which overlap with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. See, 35 USC 154(b)(1)(B), 35 USC 154(b)(2)(A), and 37 CFR § 1.703(f). See, also, *Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule*, 69 Fed. Reg. 21704 (April 22, 2004).

As uncontested by applicants, the application is entitled to an adjustment of 330 days in accordance with 37 CFR 1.702(a)(1).

The reduction of two days in accordance with 37 CFR 1.704(b) in connection with the response filed May 20, 2004 is not in dispute.

The reduction of 58 days in accordance with 37 CR 1.704(b) in connection with the response filed January 7, 2005 is not in dispute.

The reduction of 85 days in accordance with 37 CFR 1.704(b) in connection with the reply filed March 30, 2007 is not in dispute.

The reduction of 90 days in accordance with 37 CFR 1.704(b) in connection with the request for continued examination filed December 28, 2007 is not in dispute.

Applicants contest the adjustment insofar as it relates to the Office's failure to assess a reduction of 91 days in connection with the Notice of Appeal filed February 28, 2006.

As argued by applicants, the adjustment is properly reduced 91 days in accordance with 37 CFR 1.704(b) in connection with the Notice of Appeal filed February 28, 2006. The reduction commenced November 30, 2005 and ended February 28, 2006.

Applicants further contest the adjustment as it relates to the mailing of the non-final Office action on October 4, 2006. Applicants assert that the correct adjustment in this regard is 218 days.

However, the application is not entitled to any adjustment in connection with the mailing of non-final Office action on October 4, 2006. The amendment after final rejection filed November 21, 2005 did not comply with the provisions of 37 CFR 1.113(c). Thus, the provisions of 37 CFR 1.703(a)(3) do not apply. Applicants' proper reply to the final rejection was the Notice of Appeal filed February 28, 2006. Applicants did not file an appeal brief, thus, the provisions of 37 CFR 1.703(a)(4) do not apply. An amendment after final rejection was filed July 14, 2006. The non-final Office action was timely mailed October 4, 2006 within the meaning of 37 CFR 1.702(a)(2) in response to the amendment filed July 14, 2006.


In view thereof, as of the time of allowance, the application is entitled to an adjustment of 330 days less reductions totaling 326 days, or, a net adjustment of four days.

Receipt is hereby acknowledged of the required PTA application fee of \$200.00.

Applicants are further advised that the patent term adjustment indicated in the patent will include any additional patent term accrued pursuant to §§ 1.702(a)(4) and 1.702(b).

This application is being forwarded to the Office of Data Management for processing into a patent.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3205.


Alesia M. Brown
Petitions Attorney
Office of Petitions

Enclosure: Adjusted PAIR Calculation

Day : Saturday
Date: 6/20/2009**PALM INTRANET**

Time: 08:18:59

| PTA Calculations for Application: 09/935144 | | | | | |
|---|------------|---|-------------------------|------|-------|
| Application Filing Date: | | 08/21/2001 | PTO Delay (PTO): | | 527 |
| Issue Date of Patent: | | | Three Years: | | 0 |
| Pre-Issue Petitions: | | 0 | Applicant Delay (APPL): | | 235 |
| Post-Issue Petitions: | | 0 | Total PTA (days): | | 4 |
| PTO Delay Adjustment: | | -288 | | | |
| File Contents History | | | | | |
| Number | Date | Contents Description | PTO | APPL | START |
| 100 | 06/20/2009 | ADJUSTMENT OF PTA CALCULATION BY PTO | | 91 | |
| 99 | 06/20/2009 | ADJUSTMENT OF PTA CALCULATION BY PTO | | 197 | |
| 91 | 03/05/2008 | MAIL NOTICE OF ALLOWANCE | | | |
| 90 | 02/29/2008 | ISSUE REVISION COMPLETED | | | |
| 89 | 02/29/2008 | DOCUMENT VERIFICATION | | | |
| 88 | 02/27/2008 | NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED | | | |
| 87 | 02/27/2008 | CASE DOCKETED TO EXAMINER IN GAU | | | |
| 86 | 02/27/2008 | NOTICE OF ALLOWABILITY | | | |
| 85 | 01/18/2008 | DATE FORWARDED TO EXAMINER | | | |
| 84 | 12/28/2007 | AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE | | | |
| 83 | 01/18/2008 | DATE FORWARDED TO EXAMINER | | | |
| 82 | 12/28/2007 | REQUEST FOR CONTINUED EXAMINATION (RCE) | | 90 | 69 |
| 81 | 01/18/2008 | DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA) | | | |
| 80 | 12/28/2007 | REQUEST FOR EXTENSION OF TIME - GRANTED | | | |
| 79 | 12/28/2007 | WORKFLOW - REQUEST FOR RCE - BEGIN | | | |
| 78 | 11/15/2007 | MAIL ADVISORY ACTION (PTOL - 303) | | | |
| 77 | 11/13/2007 | ADVISORY ACTION (PTOL-303) | | | |
| 75 | 09/14/2007 | DATE FORWARDED TO EXAMINER | | | |
| 74 | 09/11/2007 | AMENDMENT AFTER FINAL REJECTION | | | |
| 73 | 08/07/2007 | MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413) | | | |
| 72 | 03/08/2007 | EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413) | | | |
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| 71 | 07/27/2007 | MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413) | | | |
| 70 | 03/08/2007 | EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413) | | | |
| 69 | 06/29/2007 | MAIL FINAL REJECTION (PTOL - 326) | | | |
| 68 | 06/25/2007 | FINAL REJECTION | | | |
| 67 | 06/27/2003 | INFORMATION DISCLOSURE STATEMENT CONSIDERED | | | |
| 66 | 06/27/2003 | INFORMATION DISCLOSURE STATEMENT (IDS) FILED | | | |
| 65 | 04/11/2007 | DATE FORWARDED TO EXAMINER | | | |
| 64 | 03/30/2007 | RESPONSE AFTER NON-FINAL ACTION | | 85 | 62 |
| 63 | 03/30/2007 | REQUEST FOR EXTENSION OF TIME - GRANTED | | | |
| 62 | 10/04/2006 | MAIL NON-FINAL REJECTION | 197 | | 42 |
| 61 | 09/29/2006 | NON-FINAL REJECTION | | | |
| 60 | 08/29/2006 | MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413) | | | |
| 59 | 08/24/2006 | EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413) | | | |
| 58 | 07/21/2006 | DATE FORWARDED TO EXAMINER | | | |
| 57 | 07/14/2006 | AMENDMENT/ARGUMENT AFTER NOTICE OF APPEAL | | | |
| 56 | 07/14/2006 | REQUEST FOR EXTENSION OF TIME - GRANTED | | | |
| 55 | 04/12/2006 | MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413) | | | |
| 54 | 04/10/2006 | EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413) | | | |
| 53 | 03/28/2006 | MAIL APPEALS CONF. PROCEED TO BPAI | | | |
| 52 | 03/28/2006 | PRE-APPEALS CONFERENCE DECISION - PROCEED TO BPAI | | | |
| 51 | 03/22/2006 | MAIL ADVISORY ACTION (PTOL - 303) | | | |
| 50 | 03/20/2006 | ADVISORY ACTION (PTOL-303) | | | |
| 49 | 03/08/2006 | CASE DOCKETED TO EXAMINER IN GAU | | | |
| 48 | 02/28/2006 | REQUEST FOR PRE-APPEAL CONFERENCE FILED | | | |
| 47 | 02/28/2006 | NOTICE OF APPEAL FILED | | | |
| 46 | 02/28/2006 | REQUEST FOR EXTENSION OF TIME - GRANTED | | | |
| 45 | 02/17/2006 | CASE DOCKETED TO EXAMINER IN GAU | | | |

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|----|------------|---|-----|----|----|
| 43 | 12/13/2005 | DATE FORWARDED TO EXAMINER | | | |
| 42 | 11/21/2005 | AMENDMENT AFTER FINAL REJECTION | | | |
| 41 | 08/29/2005 | MAIL FINAL REJECTION (PTOL - 326) | | | |
| 40 | 08/22/2005 | FINAL REJECTION | | | |
| 39 | 08/05/2005 | CASE DOCKETED TO EXAMINER IN GAU | | | |
| 38 | 08/04/2005 | CASE DOCKETED TO EXAMINER IN GAU | | | |
| 37 | 07/15/2005 | CASE DOCKETED TO EXAMINER IN GAU | | | |
| 36 | 07/11/2005 | DATE FORWARDED TO EXAMINER | | | |
| 35 | 06/30/2005 | RESPONSE AFTER NON-FINAL ACTION | | | |
| 34 | 06/28/2005 | CASE DOCKETED TO EXAMINER IN GAU | | | |
| 33 | 04/08/2005 | CORRESPONDENCE ADDRESS CHANGE | | | |
| 32 | 04/05/2005 | MAIL NON-FINAL REJECTION | | | |
| 31 | 04/04/2005 | NON-FINAL REJECTION | | | |
| 30 | 01/26/2005 | DATE FORWARDED TO EXAMINER | | | |
| 29 | 01/07/2005 | RESPONSE AFTER NON-FINAL ACTION | | 58 | 25 |
| 28 | 01/07/2005 | REQUEST FOR EXTENSION OF TIME - GRANTED | | | |
| 27 | 01/24/2005 | CRF IS GOOD TECHNICALLY / ENTERED INTO DATABASE | | | |
| 26 | 01/07/2005 | WORKFLOW INCOMING AMENDMENT IFW | | | |
| 25 | 08/10/2004 | MAIL NON-FINAL REJECTION | | | |
| 24 | 08/09/2004 | NON-FINAL REJECTION | | | |
| 23 | 05/26/2004 | DATE FORWARDED TO EXAMINER | | | |
| 22 | 05/20/2004 | RESPONSE TO ELECTION / RESTRICTION FILED | | 2 | 19 |
| 21 | 05/20/2004 | REQUEST FOR EXTENSION OF TIME - GRANTED | | | |
| 20 | 05/20/2004 | WORKFLOW INCOMING AMENDMENT IFW | | | |
| 19 | 02/18/2004 | MAIL SUPPLEMENTAL RESTRICTION / ELECTION REQUIREMENT | | | |
| 18 | 02/18/2004 | CORRESPONDENCE ADDRESS CHANGE | | | |
| 17 | 02/18/2004 | CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA) | | | |
| 16 | 02/18/2004 | SUPPLEMENTAL RESTRICTION | | | |
| 15 | 10/03/2003 | IFW TSS PROCESSING BY TECH CENTER COMPLETE | | | |
| 14 | 09/16/2003 | MAIL RESTRICTION REQUIREMENT | 330 | | -1 |
| 13 | 09/16/2003 | REQUIREMENT FOR RESTRICTION / ELECTION | | | |
| 12 | 09/15/2003 | CASE DOCKETED TO EXAMINER IN GAU | | | |
| 11 | 03/17/2003 | CASE DOCKETED TO EXAMINER IN GAU | | | |

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|------|------------|---|--|--|--|
| 10.7 | 10/22/2002 | INFORMATION DISCLOSURE STATEMENT (IDS) FILED | | | |
| 10 | 10/22/2002 | INFORMATION DISCLOSURE STATEMENT (IDS) FILED | | | |
| 9 | 08/21/2001 | PRELIMINARY AMENDMENT | | | |
| 8 | 01/29/2002 | CASE DOCKETED TO EXAMINER IN GAU | | | |
| 7 | 01/23/2002 | APPLICATION DISPATCHED FROM OIPE | | | |
| 6 | 01/22/2002 | APPLICATION IS NOW COMPLETE | | | |
| 4 | 01/16/2002 | CRF IS GOOD TECHNICALLY / ENTERED INTO DATABASE | | | |
| 3 | 08/21/2001 | CRF DISK HAS BEEN RECEIVED BY PREEXAM / GROUP / PCT | | | |
| 2 | 08/29/2001 | IFW SCAN & PACR AUTO SECURITY REVIEW | | | |
| 1 | 08/21/2001 | INITIAL EXAM TEAM NN | | | |

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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